

A BRIEF GUIDE TO THE HEALTH AND SAFETY (OFFENCES) ACT 2008

The Health and Safety (Offences) Act 2008 received Royal Assent on 16 October 2008 and came into force on 16 January 2009. The Act extends to England, Wales, Scotland and Northern Ireland. The Act demonstrates the Government's determination and commitment towards punishing those who fail to adequately ensure the health, safety and welfare of employees and the public at large.

Why has the Act been introduced?

For many years the Judiciary and the Health and Safety Executive have expressed their frustration at the inadequate sentencing powers available for breaches of health and safety law.

In 2000 the Government responded to this in its Revitalising Health and Safety Strategy, by pledging to increase the severity of sentencing powers for breaches of health and safety law. The Government's view was that fines for such breaches should be more in line with legislation covering environmental law and food safety.

Indeed, recent findings of the Institute of Occupational Safety and Health (IOSH) support this: "In 2005/06, the average penalty per conviction was just under £10,000. If untypical large fines (more than £100,000) are taken out, the average fine was just under £5,000." [www.iosh.co.uk]

Offences and the legal duty of care

It is important to note that the Act does not introduce new health and safety offences on to the statute book. Nor does the Act alter your organisation's legal duties to employees and non-employees as specified within the provisions of the HSWA.

Rather, the Act seeks to increase the powers of the Courts to punish those who commit offences under the Health and Safety at Work Act 1974 (HSWA).

Penalties

The Act amends the HSWA by introducing Schedule 3A, which raises the maximum penalties available to the Courts for breaches of health and safety law. Key areas include:

- Raising the statutory maximum penalty in the Magistrate's Courts from £5,000 to £20,000.
- Increasing the likelihood of imprisonment by introducing custodial sentences for breaches of sections 2 to 8 of the HSWA. Custodial sentences of 12 months can be imposed in the Magistrates Court and 2 years in the Crown Court. Sections 2 and 3 are of particular importance:
 - Section 2 places general duties on employers to ensure (so far as is reasonably practicable) the health, safety and welfare of all their employees at work.
 - Section 3 places general duties on employers and the self-employed to persons other than their employees.
- Making offences once triable in the lower Courts, now triable in either the lower or higher Courts.

What does my organisation need to do?

Organisations must take a pro-active approach towards managing health and safety in the workplace. For example focus should be on :

- **Reviewing and evaluating your health and safety management system(s)** – ensure that they are up-to-date, adequate and effective in managing risk.
- **Responsibilities** – ensure directors and management are fully aware of the Act's implications and their individual responsibilities for the management of health and safety.
- **Decision making** – ensure that this considers the relevant key aspects of effective risk management.
- **Risk management** – have all necessary risk assessments been undertaken? Control measures should eliminate or adequately reduce risk across your undertakings.
- **Competent person(s)** – does your organisation's Health and Safety Adviser/Manager conform to the 'competent person' criteria set out in Regulation 7 of The Management of Health and Safety at Work Regulations 1999?
- **Training** – have employees received adequate training? Classroom training should be followed up by practical, on-the-job assessments to demonstrate competence.
- **Communication** – ensure effective lines of communication are open to employees. This will encourage the timely reporting of incidents and facilitate the creation of a health and safety culture within the workplace.

What are the practical benefits and costs?

The Government's decision to grant lower Courts the powers to issue greater fines should have the effect of resolving a greater number of cases more quickly and efficiently than previously. This in turn should help to reduce legal costs.

Does the Act increase the likelihood of organisations being prosecuted?

No. The primary focus of the Act is to increase the severity of the penalties available to the courts for breaches of health and safety law. Furthermore, the Act does not extend the powers of HSE or Local Authority inspectors.

On a positive note...

Lord Mckenzie stated during the passage of the Bill: "...good employers and diligent managers and directors have nothing to fear, indeed they have much to gain as [the Bill] tackles the commercial advantage that unscrupulous businesses gain from non-compliance."

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